

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION**

MARION “PITT” GURKIN III,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:14-cv-02792
)	
MONTGOMERY INSURANCE CO.,)	
)	
Defendant.)	
)	

NOTICE OF REMOVAL

Defendant Montgomery Insurance Co. (“Montgomery”) by and through its undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, files this notice of removal from the Circuit Court of Shelby County, Tennessee to the United States District Court for the Western District of Tennessee, Memphis Division. In support of this Notice of Removal, Montgomery states:

I. FACTS AND PROCEEDINGS

1. On or about September 8, 2014, Marion “Pitt” Gurkin III (“Plaintiff”) filed a Complaint (the “Complaint”) against Montgomery in the Circuit Court of Shelby County, Tennessee. The state court case is styled: *Marion “Pitt” Gurkin III v. Montgomery Insurance Co.*, Case No. CT-003836-14-IV (the “State Court Action”).

2. The Complaint asserts breach of insurance contract for denying a claim to cover loss of livestock. Plaintiff seeks monetary relief based on this alleged breach. (Compl. ¶¶ 16-17.)

II. NOTICE IS TIMELY FILED

3. This notice of removal is timely filed within thirty days of this action becoming removable. *See* 28 U.S.C. § 1446(b) (2011). The Complaint was served on the State of Tennessee Department of Insurance on September 12, 2014, which is less than 30 days from the

filing of this Notice.

4. No responsive pleadings have been filed by Montgomery in the State Court Action.

III. REMOVAL PROCEDURES

5. Removal of this case is proper under 28 U.S.C. § 1441(a), which provides in pertinent part, that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a) (2011).

6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1441(a). Montgomery seeks to remove this case to the United States District Court for the Western District of Tennessee. The Circuit Court of Shelby County, Tennessee is located within this District and cases arising from Shelby County are properly assigned to the Memphis Division of this Court. *See* 28 U.S.C. § 123(c)(2).

7. In compliance with 28 U.S.C. § 1446(a), a copy of all “process, pleadings, and orders” received by Montgomery are attached hereto as *Exhibit “A”*.

8. Montgomery has filed this Notice of Removal with this Court, is contemporaneously serving a copy of the Notice of Removal upon counsel for Plaintiff, and is filing a copy of this Notice of Removal in the Shelby County Circuit Court pursuant to 28 U.S.C. § 1446(d). A copy of the Notice of Filing Removal that is being filed with Shelby County Circuit Court is attached hereto as *Exhibit “B”*.

IV. THIS COURT HAS DIVERSITY JURISDICTION

9. This Court has original jurisdiction over this action under 28 U.S.C. § 1332, which provides: “The district courts shall have original jurisdiction of all civil actions where the

matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between – (1) citizens of different States.” 28 U.S.C. § 1332.

10. Plaintiff is a citizen and resident of Grand Junction, Hardeman County, Tennessee. (Compl. ¶ 1.)

11. Montgomery is a division of Liberty Mutual Insurance Company, whose principal place of business is in Boston, Massachusetts. (*See* Compl. ¶ 2.)

12. Accordingly, on the face of the Complaint, complete diversity of citizenship exists between the parties.

13. The \$75,000.00 amount-in-controversy requirement also is satisfied here. In his Complaint, Plaintiff requests monetary damages in an amount in excess of \$207,820.00. (Compl., Prayer for Relief ¶ 1.) The Plaintiff also seeks attorneys’ fees in the amount of \$68,580.00. (Compl., Prayer for Relief ¶ 2.)

V. CONCLUSION

WHEREFORE, Montgomery respectfully requests the above-captioned action now pending in the Circuit Court for Shelby County, Tennessee, be removed to the United States District Court for the Western District of Tennessee, that this Court assume jurisdiction of this action and enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

Respectfully submitted,

/s/ John R. Wingo

John R. Wingo (BPR No. 16955)

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Counsel for Defendant, Montgomery Insurance Co.

CERTIFICATE OF SERVICE

I hereby certify that on 14th day of October, 2014, a true and accurate copy of the foregoing NOTICE OF REMOVAL was electronically filed with the Clerk's office and served by U.S. Mail, first class, postage prepaid upon Ryan C. Smith, 44 North Second Street, Ste. 502, Memphis, TN 38103.

/s/ John R. Wingo

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